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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/743,242	12/22/2003	Nathan P. Hendon	16124	6965
23556	7590	04/13/2006	EXAMINER	
KIMBERLY-CLARK WORLDWIDE, INC.			TORRES VELAZQUEZ, NORCA LIZ	
401 NORTH LAKE STREET			ART UNIT	
NEENAH, WI 54956			PAPER NUMBER	

1771

DATE MAILED: 04/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/743,242

Applicant(s)

HENDON ET AL.

Examiner

Norca L. Torres-Velazquez

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 12-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 November 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

1. Applicant's arguments with respect to claims 1-11 have been considered but are moot in view of the new ground(s) of rejection.
2. The claims have been amended to now claim a "gatherable nonwoven layer" instead of a flexible nonwoven layer.

#### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over WRIGHT (US 5,385,775) in view of KAUSCHKE et al. (WO 01/012427 A1).

WRIGHT discloses a composite elastic material that includes an elastic fibrous web having at least one layer of elastomeric meltblown fibers and at least one layer of substantially parallel rows of elastomeric filaments autogenously bonded to at least a portion of the elastomeric meltblown fibers, and at least one gatherable layer joined at spaced apart locations to the elastic fibrous web so that the gatherable layer is gathered between spaced-apart locations. (Abstract) The gatherable layer may be a nonwoven web of fibers. (Col. 5, lines 39-40) The reference also teaches the use of a second nonwoven gatherable layer 28. (Col.6, lines 64-65; Col. 7, lines 43-45) The reference teaches the use of thermal bonding or ultrasonic welding to join the layers. (Col. 8, lines 6-10) The reference teaches that the bonding between the gatherable layers and the elastic sheet is a point bonding. Various bonding patterns can be used,

Art Unit: 1771

depending upon the desired tactile properties of the final composite laminate material. (Col. 8, lines 31-35)

It is the Examiner's interpretation that the layer of elastomeric meltblown fibers of WRIGHT equates to the presently claimed bonding component, the parallel rows of elastomeric filaments equate to the claimed parallel elastomeric filaments and the gatherable nonwoven layer equates to the claimed nonwoven layer. It is noted that the point bonding will provide bond elements.

While WRIGHT teaches that various bonding patterns can be used depending upon the desired tactile properties of the final composite laminate material, the reference is silent to the claimed bond pattern dimension ratio.

KAUSCHKE et al. discloses a nonwoven having a non-symmetrical bonding configuration yielding low tensile strength and high percent elongation in a first direction and high tensile strength and low percent elongation in a second direction. (Page 1, lines 8-11) The reference teaches non-symmetrical bonding pattern configurations that result in a fabric with an expected or standard elongation in one direction, but increased elongation in the other direction. (Page 2, lines 1-3) The bonding points 20 are preferably either substantially circular or substantially oval, although other shapes may be used. The disposition of the bonding points 22 closer to each other in the MD 14 than in the CD 12 has the effect of increasing the tensile strength and decreasing the percentage elongation in the MD 14, relative to the tensile and elongation in the CD 12. (Page 6, lines 9-20; Page 7, lines 9-20) The reference teaches square or polygonal (rectangular, hexagonal, etc.) bonding points instead of oval or circular ones. (Page 9, lines 28-29) The reference teaches using a calendaring process or an ultrasonic process

Art Unit: 1771

to provide the bonding pattern. (Page 14, lines 15-21) The reference further teaches composites or laminates 140 provided from nonwoven fabrics 10 of their invention and an elastic film 142. (Page 14, lines 22-24)

Since both references are directed to laminates useful in the diaper-making industry (refer to pages 17-18 of KAUSCHKE and Col. 1, lines 14-16 of WRIGHT), the purpose disclosed by WRIGHT would have been recognized in the pertinent art of KAUSCHKE.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the bonding pattern of WRIGHT and provide with the non-symmetrical configuration of KAUSCHKE with the motivation of providing the material with a low tensile strength and high elongation in a first direction and a high tensile strength and low elongation in a second direction as disclosed by KAUSCHKE. (Abstract)

Although KAUSCHKE et al. does not explicitly teach the claimed bond pattern dimension ratio it is reasonable to presume that this property is inherent to the pattern taught by the KAUSCHKE et al. reference. Support for said presumption is found in the use of like materials (i.e. nonwoven material with non-uniform bond patterns). The burden is upon Applicant to prove otherwise. *In re Fitzgerald* 205 USPQ 594. In addition, the presently claimed property of a nonwoven bond pattern dimension ratio greater than 1 would obviously have been present one the WRIGHT product is provided with the bonding pattern taught by KAUSCHKE et al. Note *In re Best*, 195 USPQ at 433, footnote 4 (CCPA 1977) as to the providing of this rejection made above under 35 USC 102. Reliance upon inherency is not improper even though rejection is based on Section 103 instead of Section 102. *In re Skoner, et al.* (CCPA) 186 USPQ 80 It is further noted that where the general conditions of a claim are

Art Unit: 1771

met, mere changes in size and shape have been held to be within skill of the art dependent only on the desired end use of the article claimed, *In re Rose* (105 USPQ 237), *In re Dailey* (149 USPQ 47).

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

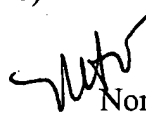
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Norca L. Torres-Velazquez whose telephone number is 571-272-1484. The examiner can normally be reached on Monday-Thursday 8:00-5:00 pm and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1771

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Norca L. Torres-Velazquez  
Primary Examiner  
Art Unit 1771

April 7, 2006